

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Faren Gibbs, #222138,)	
)	
Petitioner)	Civil Action No. 8:04-21846-CMC-BHH
)	
vs.)	<u>REPORT OF MAGISTRATE JUDGE</u>
)	
Henry McMaster, Attorney)	
General of South Carolina,)	
)	
Respondent.)	
)	

The petitioner, a state prisoner proceeding *pro se*, seeks habeas corpus relief pursuant to Title 28, United States Code, Section 2254.

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(c), D.S.C., this magistrate judge is authorized to review posttrial petitions for relief and submit findings and recommendations to the District Court.

On April 11, 2005, this court recommended that the respondent's motion for summary judgment filed October 14, 2004, be granted. By order filed May 20, 2005, the Honorable Cameron McGowan Currie, United States District Judge, declined to adopt the recommendation and recommitted the case to this court for further proceedings. By order filed May 25, 2005, the respondents were directed to file supplemental pleadings, and on June 16, 2005, the respondents filed a motion for summary judgment with supporting memorandum and exhibits. Pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the petitioner was advised of the summary judgment procedure and the possible consequences if he failed to adequately respond to the motion. On August 2, 2005, the petitioner filed a motion for voluntary dismissal without prejudice to give him an opportunity

to exhaust his available state remedies. The respondent has filed no opposition to the petitioner's motion.

Wherefore, it is recommended that the petitioner's motion be granted and this action be dismissed without prejudice.

s/Bruce H. Hendricks
United States Magistrate Judge

August 25, 2005

Greenville, South Carolina